

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES,

Plaintiff,

v.

Criminal Case No. 91-80936-12  
Honorable Patrick J. Duggan

Karl Wingo,

Defendant.

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**ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY**

Presently before the Court is Defendant's motion for certificate of appealability filed May 23, 2011. (Doc. 1208.) Defendant seeks a certificate of appealability with respect to this Court's May 2, 2011 Opinion and Order denying two of Defendant's motions: (1) a motion for reconsideration of the Court's order denying his motion for relief from judgment and (2) a motion to correct clerical mistake in judgment, commitment order, and presentence report. (Doc. 1203.)

28 U.S.C. § 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated:

“... the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.”

*Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983) (quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980))(emphasis added and internal citation and quotation marks omitted). As the Supreme Court more recently stated, “[w]here a district court has rejected the constitutional claim on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

For the reasons set forth in the Court’s February 28 and May 2, 2011 decisions, the Court continues to believe that Defendant is not entitled to relief from judgment. The Court further believes that this conclusion is not “debatable among jurists of reason.” With respect to Defendant’s motion to correct a clerical mistake in the judgment, commitment order, and presentence report, Defendant filed a motion for reconsideration with respect to the Court’s decision that was pending when he filed his motion for a certificate of appealability. (Doc. 1205.) This Court entered an opinion and order on today’s date, granting in part and denying in part his motion. Based on the Court’s decision, it finds his request for a certificate of appealability with respect to that motion moot.

Accordingly,

**IT IS ORDERED**, that Defendant’s Motion for Certificate of Appealability is **DENIED** with respect to the Court’s decision denying Defendant’s motion for reconsideration of the Court’s order denying his motion for relief from judgment;

**IT IS FURTHER ORDERED**, that Defendant's Motion for Certificate of Appealability is **DENIED AS MOOT** with respect to the Court's decision denying Defendant's motion to correct clerical mistake in judgment, commitment order, and presentence report.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

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